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## United States Senate

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March 04, 2010

The Honorable William Craig Fugate  
Administrator  
Federal Emergency Management Agency  
500 C Street SW  
Washington, D.C. 20472

Dear Administrator Fugate:

I am writing to you regarding the conversation we had yesterday about the impact of the Federal Emergency Management Agency's (FEMA) flood map modernization program on small communities in Montana. The levees in Great Falls, MT are scheduled to be officially de-accredited for purposes of FEMA's Flood Insurance Rate Map on April 28, 2010. I request that FEMA delay the implementation of the new flood insurance rate maps in Montana for one year to give local communities sufficient time to resolve the levee certification issue.

In 2003, FEMA began a nationwide modernization of flood insurance rate maps. As part of the map modernization, FEMA has begun to verify the certification status of all levees accredited as providing protection from 100-year floods. Simultaneously, the Army Corps of Engineers (USACE) has largely ceased performing certifications of levees that it designed and built, but which are now operated by non-federal sponsors.

The combination of FEMA's new focus on certifications and a lack of USACE certifications has left small communities in Montana in an untenable position. Communities like Great Falls, Glendive, and Miles City may have several miles of levees protecting just a few hundred properties. Without the assistance of USACE, funding a comprehensive survey of the levee and surrounding hydrology for a certification is not possible for these small communities. However, without certification, FEMA will de-accredit the levees, and the areas they protect will be deemed Special Flood Hazard Areas. Montanans behind levees would face new and burdensome insurance requirements which would severely damage the local economy. FEMA proposes to require these studies to be re-done every ten years, promising a repeated and massive drain on rural budgets.

FEMA has enacted a system of provisionally accrediting levees. However, in order to take advantage of this system, local communities must assert that the condition and design of levees built by USACE decades earlier meet FEMA's requirements for levees under CFR 65.10. Signing a PAL may make a local community liable for any damage caused by the failure of a

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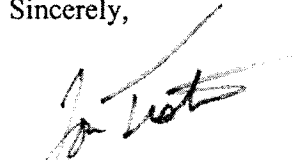
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levee. Liability questions have prevented communities in Montana from signing provisional levee accreditations, leaving them to face imminent de-accreditation of their levees, with all of the hardship that accompanies it. Given this situation, I respectfully request answers to the following questions:

- Under current regulations, who is liable for a federally constructed levee with a non-federal sponsor?
- Does signing a Provisionally Accredited Levee Agreement place the signatory into the chain of liability for the failure of a levee?
- How has FEMA worked with the USACE to minimize the cost that local flood districts have to pay for certification?
- What accommodations has FEMA made for small communities that cannot afford the cost of a private engineering firm for levee certification?
- Has FEMA considered the lack of sufficient engineering resources in small, rural communities when requiring certifications?

Small, rural communities face particular difficulty in funding the studies required for certification of their levees. I hope that FEMA will work with me to find a solution for Montanans protected by these levees.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Tester", is written over a horizontal line.

Jon Tester  
United States Senator